Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1650

ALBERT OHRALIK,

Appellant,

v.

OHIO STATE BAR ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

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IN THE

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OCTOBER TERM, 1976

No.

ALBERT OHRALIK,

Appellant,

v.

OHIO STATE BAR ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

Albert Ohralik, the appellant, appeals from the final judgment of the Supreme Court of Ohio, dated December 15, 1976, holding that DR 2-103(A) and DR 2-104(A) of the Ohio Code of Professional Responsibility, as applied in this case, are not unconstitutional as being violative of appellant's right of free speech guaranteed by the First Amendment of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio, which appears in the appendix hereto, p. 1a, *infra*, is reported at 48 Ohio St.2d 217 (1976).

The findings of fact and recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, dated May 18, 1976, are not reported. They are reprinted in the appendix hereto, p. 11a *infra*.

JURISDICTION

The judgment of the Supreme Court of Ohio, indefinitely suspending appellant from the practice of law in Ohio, was entered on December 15, 1976. See p. 5a, *infra*. A motion for rehearing was entertained and denied on February 24, 1977. See p. 7a, *infra*.

A supplementary notice of appeal to this Court was duly filed in the Supreme Court of Ohio on March 21, 1977. See p. 8a, *infra*.

This appeal is being docketed in this Court within 90 days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Whether DR 2-103(A) and DR 2-104(A) of the Ohio Code of Professional Responsibility are violative of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied to suspend a lawyer indefinitely from the practice of law for having orally solicited his legal services on two occasions, there

being no claim of misrepresentation, overreaching, fraud, or other activity impinging on any public interest or on any interest of the clients.

CONSTITUTIONAL PROVISIONS AND RULES

First Amendment, United States Constitution:

Congress shall make no law . . . abridging the freedom of speech . . .

DR 2-103(A), Ohio Code of Professional Responsibility:

A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.

DR 2-104(A), Ohio Code of Professional Responsibility:

A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

• • • •

RAISING THE FEDERAL QUESTION

At the earliest stage of the disciplinary proceedings below the appellant raised the claim, in a motion to dismiss the complaint, that DR 2-103(A) and DR 2-104(A) of the Ohio Code of Professional Responsibility were "unconstitutional for repugnancy to the free speech provisions of the First Amendment to the United States Constitution." Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline, p. 15a, *infra*. As the opinion of the Supreme Court of Ohio indicated (p. 3a, *infra*), the Board "found respondent's defense, that the solicitation of business by an attorney is protected by the First and Fourteenth Amendments to the United States Constitution, to be without merit and overruled respondent's motion to dismiss."

This First Amendment claim was reiterated by appellant before the Supreme Court of Ohio. There he renewed his motion to dismiss the proceedings "on the ground that DR 2-103(A) and DR 2-104(A) are unconstitutional for the reason that they deprive respondent of free speech as guaranteed by the United States and Ohio Constitutions." See opinion below, p. 4a, *infra*. The Ohio Supreme Court overruled the renewed motion to dismiss. *Ibid.* It thus considered and expressly rejected this federal constitutional claim.

STATEMENT OF THE CASE

The appellant, Albert Ohralik, was admitted to the practice of law in Ohio in 1948. At all material times, he resided in the township of Montville, Ohio, while maintaining his law office in Cleveland, Ohio.

In September of 1975, the appellee Ohio State Bar Association filed a complaint with the Board of Commissioners on Grievances and Discipline against the appellant. The complaint alleged that he was guilty of the following misconduct:

> On or about February 13, 1974, Respondent learned that Carol McClintock and Wanda Lou Holbert of Chardon, Ohio, had been injured in an automobile accident. He then contacted Albert and Helen McClintock, the parents of Carol McClintock. Upon being informed that Carol McClintock was in the hospital, Respondent went to see her and advised her as to her legal rights. She thereupon employed Respondent to represent her as to her claims arising out of the accident.
>
> On or about February 13, 1974, Respondent also went to the home of Wanda Lou Holbert and interviewed her regarding the accident. During such interview, Respondent advised Wanda Lou Holbert that she had a good claim for recovery for her injuries as a result of the accident and offered his services as an attorney to represent her. She thereupon employed Respondent.
>
> Relator says that Respondent has violated DR-2-103(A) and DR 2-104(A) of the Code of Professional Responsibility.

The relevant facts that led to this charge, while contested in various respects, may be fairly summarized as follows:

(1) For many years preceding the events of 1974, appellant had been a prominent, esteemed and newsworthy attorney in Montville township. In 1964, he had sought

to be a candidate for election as a state representative, and received the signatures of Arnold and Helen McClintock (among many others) on his nominating petition. Later, he was a publicized candidate for election as a precinct committeeman. He had also been conspicuous in the area as counsel for a former judge in his suit for recovery of his salary for his full elected term. See *Hoffstetter* v. *Kronk*, 20 Ohio St.2d 117.[1]

(2) Since 1968, appellant had maintained a mailbox in the Montville postoffice, which he often visited twice a day to pick up mail. On many occasions, perhaps 200 times a year, he had met some member of the McClintock family at the postoffice and exchanged pleasantries with them. He had thus come to know Carol McClintock as a friend. Wanda Lou Holbert also frequented the postoffice, but appellant knew her only by sight.

(3) On February 4 or 5, 1974, the postmaster's brother advised appellant that Carol McClintock had been badly injured in an auto accident "last Saturday" – which was February 2, 1974. Appellant expressed his regrets. But he did not seek to contact or to speak to any member of the McClintock family until February 13.

(4) On February 13, appellant met the postmaster's brother again and inquired as to Carol McClintock's condition. Since the said brother had heard no further word, appellant called the McClintock home and asked Carol's mother, Helen McClintock, about her well-being. Mrs. McClintock replied that Carol was in a hospital in Painesville, Ohio, and asked appellant "is one of you there an attorney?" Appellant told her that both he and his brother

[1] Appellant's opponent in that litigation was also the chairman of the county bar association's grievance committee that initiated the disciplinary proceeding against appellant.

were attorneys, but that that was not why he was phoning. Mrs. McClintock then asked appellant if he would stop by the house on the way to the hospital, where he intended to pay Carol a friendly visit.

(5) Upon visiting the McClintocks' house the morning of February 13, appellant was apprised by them of their fear that they might be sued by the parents of the other young woman (Wanda Lou Holbert) who had been riding with Carol McClintock as a guest at the time of the accident. They broached the subject of appellant representing Carol and pointed out that the hospital administrator had urged them to engage a certain law firm. Appellant allayed their fears by reference to the Ohio guest statute.

(6) Appellant immediately drove to the hospital to visit Carol, who was pinnioned and propped in bed. Entirely on her own initiative, she told appellant that on the day of the accident a hospital administrator had urged her to employe a certain law firm. Just as he was about to leave, Carol told him to tell her parents to call upon her that evening to discuss whether to hire appellant as attorney.

(7) Appellant then returned to the McClintocks' house once again. When he arrived, he found that Carol had already called her parents and asked them to tell appellant to go ahead in representing her. Appellant also examined the McClintocks' automobile liability policy and discussed the law applicable to passenger guests; he was also told the address of Wanda Lou Holbert so that he could discuss the details of the accident with her. All of this conversation with the McClintocks was tape recorded by appellant, and the tape was introduced at the disciplinary hearing. A written agreement with Carol was signed on February 15.

(8) Appellant thereupon drove to the home of Wanda Lou Holbert, who had just returned from a hospital confinement. He told Wanda that he had just been retained by Carol McClintock and wanted to get some of the details of the accident. Wanda replied that she could remember no details. Appellant then remarked that Wanda had a good claim too, and that he could handle it along with Carol's claim; he added that if she were to recover anything, he would ask for one-third of the recovery. Wanda replied "O.K." – which was the only agreement ever made with appellant. There never was a written agreement. All of this conversation with Wanda was tape recorded by appellant, and the tape was introduced at the disciplinary hearing.

(9) Wanda's mother attempted to repudiate the agreement the next morning. But it was not until March 14 that Wanda herself wrote a letter saying that appellant was no longer her lawyer. In the meantime, appellant had made certain demands on Wanda's behalf, but he never consummated any settlement for her.

(10) Appellant's relationships with Carol McClintock were harmonious, however, and he pursued her claims with vigor. The maximum recovery possible for her was $12,500.00 under the uninsured motorist coverage. And, indeed, by April 11, 1974, appellant had sent the insurance carrier a demand that Carol be paid $12,500.00.

(11) On April 12, 1974, without prior warning, appellant received a communication from Carol McClintock discharging him as her attorney and demanding that he submit the file to another attorney. Shortly thereafter, appellant received an acknowledgment from the insurance carrier that her claim was indeed worth $12,500.00 and that it would pay said amount upon execution of the

proper releases. When this information was conveyed to Carol, she refused to participate in the release of these moneys and asserted that appellant was entitled to no fee for his services. Her new counsel also stated that appellant's services were worthy of no compensation.

(12) Appellant's position as to Carol McClintock was that he had a valid written retainer agreement with her, which he was determined would be performed. Appellant sued Carol McClintock on her signed agreement for the value of services rendered, and ultimately accepted a settlement in the amount of $4,166.66. As to Wanda Lou Holbert, appellant testified that he would abandon his claim against her because of his belief that under the disciplinary rules an ethical question arises "if a contract has its origin in a controversy." See opinion below, p. 3a, *infra*.

Complaints were then made by both Carol McClintock and Wanda Lou Holbert, and these disciplinary proceedings followed. After considering the testimony and exhibits, the Board of Commissioners on Grievances and Discipline recommended that the appellant "be given a public reprimand." See p. 15a, *infra*. But the Supreme Court of Ohio, upon its review of the same record, ordered that appellant "be indefinitely suspended from the practice of law for these unethical violations of the Code of Professional Responsibility." See p. 4a, *infra*. The Supreme Court did not explain why appellant's conduct constituted violations; nor did it distinguish in any way the applicability of DR 2-103(A) and DR 2-104(A) to the facts of the case.

THE QUESTION IS SUBSTANTIAL

The question as to the First Amendment implications of the widespread practice of penalizing lawyers who speak out to recommend their own services is a novel and substantial one. It has never been treated before by this Court.

Lawyers, of course, are entitled to First Amendment protection as is any other citizen. One of the major issues now before this Court is the extent to which the First Amendment outlaws a total ban on written advertising by the attorney. *Bates* v. *Arizona State Bar*, No. 76-316. This case presents the oral side of that First Amendment coin. Does a lawyer have any constitutional right to proclaim his availability, or to recommend his own services, by word of mouth?

This Court has recognized that organizations have a First Amendment right to inform their members (orally or in writing) of their legal rights and to recommend and provide legal services. *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963); *United Mine Workers* v. *Illinios State Bar Association*, 389 U.S. 217 (1967); and see *Bigelow* v. *Virginia*, 421 U.S. 809 (1975). The reverse of that organizational problem is here present. Does the individual attorney have a right to advise others of their legal rights and to recommend his own legal service?

Moreover, the continued vitality of the traditional absolute ban – like Ohio's – on an individual attorney's solicitation of legal representation has recently been drawn into question by this Court. In *Virginia Pharmacy Board* v. *Virginia Consumer Council*, 425 U.S. 748 (1976), the Court overturned, as violative of the First and Fourteenth Amendments, a Virginia law that barred advertisements by

Virginia pharmacists of the prices they charged for prescription drugs. In so holding, the Court noted (425 U.S. at 773) that a state may not

> ". . . completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients."

The Court recognized that a state has a strong interest in "maintaining a high degree of professionalism on the part of licensed pharmacists." 425 U.S. at 776. But it found that the interests of the pharmacists, consumers and society in the free flow of such commercial information outweighed the tired sibboleths of professionalism, teaching that any kind of competitive advertising is unethical.

At the same time, the Court recognized that certain forms of commercial speech regulations are "surely permissible" and strongly hinted that commercial speech may, consistent with the First Amendment, be subject to closer regulation than other varieties of speech. 425 U.S. at 770 and 771, n. 24.

The question, then, is whether the *Virginia Pharmacy* rationale should be extended to the regulation of another type of professionalism – *i.e.*, lawyers. Such an extension is by no means certain, for as the Court noted in its final footnote 25, 425 U.S. at 773,

> "We stress that we have considered in this case the regulation of commercial advertising by pharmacists. Although we express no opinion as to other professions, the distinctions, historical and functional, between professions, may require consideration of quite different factors. Physicians

> and lawyers, for example, do not dispense standardized products; they render professional services of almost indefinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising."

See also the concurring opinion of the Chief Justice, 425 U.S. at 774.

Despite such doubts, a substantial First Amendment question is raised on the record in this case. No interest of the state of Ohio was found to be at stake by the Supreme Court of Ohio, which merely brushed aside the First Amendment claim without comment. There was no finding that appellant's oral solicitation involved any degree of misrepresentation, overreaching or fraud. No finding was made that the appellant's legal services were excessively priced or reflected incompetence. No finding was made that appellant manufactured his clients' causes of action, or did anything that cast the legal profession in a bad light. All that appellant told his clients about the law and his services appears on this record to have been totally truthful. And they were clients whom he had previously known and seen in a small community. The clients were neither deceived nor confused.

Why, then, should appellant not be protected in his First Amendment right to speak freely, even in commercial terms? Why are not the consumers of legal services entitled to know the availability of competent lawyers like appellant? On any balancing of the state's interests with those of the appellant, how can Ohio's interest in blindly enforcing professional standards prevail?

Ohio has imposed its DR 2-103(A) and DR 2-104(A) in such a way as to subject appellant to the supreme penalty of the legal profession – indefinite suspension or disbarment. The absence of any discernible interest in so doing only adds substantially to the First Amendment claim.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A

Statement of the Case.

OHIO STATE BAR ASSOCIATION *v.* OHRALIK.

[Cite as Ohio State Bar Assn. v. Ohralik (1976), 48 Ohio St. 2d 217.]

Attorneys at law—Misconduct—Indefinite suspension—Acts warranting.

(D. D. No. 76-8—Decided December 15, 1976.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Albert Ohralik, respondent, was admitted to the practice of law in Ohio in March 1948. He is 55 years old and resides in Montville, Ohio. His law office is in Cleveland.

Relator, Ohio State Bar Association, filed a complaint with the Board of Commissioners on Grievances and Discipline against Albert Ohralik, alleging that he solicited the personal injury cases of Carol McClintock and Wanda Lou Holbert in violation of DR 2-103(A) and DR 2-104(A) of the Code of Professional Responsibility.

Most of the material events involved in this complaint occurred on or about February 13, 1974. In the early morning of that day, while at the Montville, Ohio, Post Office, respondent learned from the postmaster's brother that Carol McClintock, of Montville, and Wanda Lou Holbert, of Chardon, had been involved in a serious automobile accident. Neither Carol McClintock nor Wanda Lou Holbert were relatives or former clients of respondent. Both were, if anything, casual acquaintances. Upon learning of the accident, which had occurred on February 2, 1974, respondent telephoned Carol's mother, obtained her consent to visit Carol at the hospital, and, later that day, proceeded to the hospital where Carol was undergoing treatment for the injuries sustained in the accident.

Carol McClintock testified that, until respondent visited her in the hospital on February 13th, she did not know that he was a lawyer. She admitted to a casual acquaintanceship with him, which began with her visits to the

Statement of the Case.

Montville Post Office to pick up the family mail, and which was limited to a customary exchange of greetings on such occasions. She also knew that her father had purchased an automobile from respondent a number of years ago. Disputing this testimony, respondent insisted that Carol must have been aware that he was a practicing lawyer because, among other things, he had been a candidate for a political office and the fact was evident from his campaign literature.

After reviewing with Carol the legal merits of her cause and the need for proper representation, respondent obtained Carol's consent to handle the claim. Leaving the hospital, respondent drove to the home of Carol's parents, where he examined their automobile liability policy, discussed the law applicable to passenger guests, and obtained the address and directions to the home of Wanda Lou Holbert, a passenger in the automobile driven by Carol McClintock.

Wanda Lou was then 18 years of age. Respondent, upon being admitted to her home, advised Wanda that he represented Carol McClintock, and that he had a "tip" for her, namely: that she had a substantial legal claim for the injuries she had suffered while riding as a passenger in the automobile driven by her neighborhood friend, Carol. He further informed her he was prepared to supply her with the legal services necessary to capitalize on her claim. Respondent's representations induced Wanda to orally agree to employ her attorney in the matter.

The following February 14, 1974, respondent telephoned Wanda Lou for purposes of firming the client-attorney relationship begun the preceding day. The phone was answered by Wanda Lou's mother, who unceremoniously advised him that his services were not desired. Respondent retorted by pointing out that it was not she but Wanda Lou, a competent consenting adult, who was his client.

Respondent, in support of his claim that a binding agreement to engage his services had been made with

Statement of the Case.

Wanda Lou, introduced in evidence a tape recording of the February 13, 1974, conversation with Wanda Lou. The recording was made on respondent's recorder, hidden at the time of recording under respondent's coat, and made without the knowledge of Wanda Lou. Some of the recorded conversation indicates a consent by Wanda Lou to the utilization of respondent's professional services, but the conversation also demonstrates that this consent was induced and solicited by respondent.

Thereafter, both Carol and Wanda attempted to disengage respondent's services. Wanda's attempt began immediately, and Carol's some time after February 1974. Respondent insisted he had a valid binding agreement with both, which he was determined would be performed. Respondent sued Carol McClintock on her signed agreement for the value of services rendered, and ultimately accepted a settlement in the amount of $4,166.66. He testified that, as to Wanda Lou Holbert, he will abandon his claim against her because of his belief that under the disciplinary rules an ethical question arises "if a contract has its origin in a controversy."

Respondent's answer to the complaint denied violation of the above disciplinary rules and moved to dismiss the complaint, contending that the above provisions of the Code of Professional Responsibility are unconstitutional for repugnancy to the free-speech provision of the First Amendment to the United States Constitution.

After hearings on November 24, 1975, and January 29, 1976, the board found that the respondent did, in fact, solicit the personal injury cases of Carol McClintock, and Wanda Lou Holbert, in violation of DR 2-103(A) and DR 2-104(A), Code of Professional Responsibility.

The board found respondent's defense, that the solicitation of business by an attorney is protected by the First and Fourteenth Amendments to the United States Constitution, to be without merit and overruled respondent's motion to dismiss.

Although not objecting to the findings of fact of the

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Opinion *Per Curiam*.

board, respondent renewed his motion to dismiss these proceedings on the ground that DR 2-103(A) and DR2-104 (A) are unconstitutional for the reason that they deprive respondent of free speech as guaranteed by the United States and Ohio Constitutions.

This court overruled respondent's renewed motion to dismiss.

Mr. John R. Welch, Mr. Albert L. Bell, Mr. Edward N. Heiser and *Mr. James S. Patrick*, for relator.

Mr. Walter S. Haffner, for respondent.

Per Curiam. DR 2-103(A) of the Code of Professional Responsibility provides:

"A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer."

DR 2-104(A) reads:

"A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that: • • • [exceptions not applicable here]."

A review of the record before us reflects ample, uncontroverted evidence supportive of the finding of the Board of Commissioners on Grievances and Discipline that respondent, Albert Ohralik, violated DR 2-103(A) and DR 2-104(A), set forth above, in soliciting and obtaining agreements from Carol McClintock and Wanda Lou Holbert to represent each of them in their respective claims for damages arising out of the accident of February 2, 1974.

It is the considered judgment of this court that respondent be indefinitely suspended from the practice of law for these unethical violations of the Code of Professional Responsibility.

Judgment accordingly.

O'Neill, C. J., Herbert, Corrigan, Stern, Celebrezze, W. Brown and P. Brown, JJ., concur.

THE SUPREME COURT OF
THE STATE OF OHIO
Of the Term of January, 1976.
To-wit: December 15, 1976.

Ohio State Bar Association, *Relator,*	ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
v.	
Albert Ohralik, *Respondent.*	*DD No. 76-8*

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Cout on May 19, 1976, recommending that the respondent, Albert Ohralik, be given a public reprimand pursuant to Section 6(c) of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that Respondent filed objection to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was submitted to the Court. On consideration thereof, it is ordered and adjudged by this court that the respondent, Albert Ohralik, be indefinitely suspended from the practice of law, pursuant to Section 6(b) of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

The respondent, Albert Ohralik, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any

kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Albert Ohralik, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Albert Ohralik, pay the costs of these proceedings taxed in the amount of One Thousand Seven Hundred Ninety Seven Dollars and twenty-eight cents ($1,797.28).

It is further ordered that the Clerk of this Court issue certified of this entry as provided for in Section 20 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED: CHIEF JUSTICE
(C. WILLIAM O'NEILL)

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, *1977 TERM*
City of Columbus. *to wit:* February 24, 1977

Ohio State Bar Association,
Relator, *No.* DD 76-8

v.

Albert Ohralik,
Respondent. REHEARING

It is ordered by the court that rehearing in this case is denied.

THE SUPREME COURT OF OHIO

OHIO STATE BAR ASSOCIATION *Relator,*	CASE NO. DD 76-8
v.	ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS
ALBERT OHRALIK *Respondent.*	ON GRIEVANCES AND DISCIPLINE

[Filed: March 21, 1977]

SUPPLEMENTARY NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Respondent ALBERT OHRALIK hereby appeals to the Supreme Court of the United States from the final judgment affirming the Final Report of the Board of Commissioners on Grievance and Discipline entered in this action on December 15, 1976, and from the denial of respondent's Motion for Rehearing entered in this action on February 24, 1977. This appeal is taken pursuant to 28 U.S.C. §1257(2).

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. all docket and journal entries.
2. all brief, pleadings and original papers.
3. all reports and judgment entries on said reports.
4. all motions filed herein and the rulings on said motions.

The following questions are presented by this appeal:

I. DR 2-103 (A) and DR 2-104(A) of the Code of Professional Responsibility of the State of Ohio are unconstitutional since they deprive respondent of the rights of free speech as guaranteed to respondent by the First Amendment of the Constitution of the United States and made applicable to the states by the Fourteenth Amendment of the federal constitution.

II. The failure of the Ohio Supreme Court to afford respondent a hearing upon his objections to the Report of the Board of Commissioners on Grievance and Discipline, in contravention of Rule V(20) of the Supreme Court Rules for the Governance of the Bar of Ohio, violates the Fourteenth Amendment Due Process clause.

III. The charges brought against respondent before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio were so vague as to fail to put respondent on notice of the allegation against him, in contravention of the Fourteenth Amendment Due Process clause.

IV. The Supreme Court of Ohio considered matters relating to respondent's conduct contained in the Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, which matters were not charged in

the Complaint and Certificate brought by the Ohio State Bar Association before the Board of Commissioners, in deciding to impose a greater penalty than that recommended by the Board of Commissioners, in contravention of the Fourteenth Amendment Due Process clause.

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APPENDIX B

FILED
MAY 18, 1976
BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
WILLIAM D. RADCLIFF, Sec'y.

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In re:	:	CASE NO. 229
Complaint against:	:	
Albert Ohralik,	:	
Respondent,	:	**Findings of Fact and Recommendation**
Ohio State Bar Association,	:	**of the Board of Commissioners on**
Relator.		**Grievances and Discipline of** **The Supreme Court of Ohio**

This matter was heard by the Hearing Panel on November 24, 1975 and January 29, 1976.

The Complaint against Respondent alleged that the Respondent, Albert Ohralik, in violation of Disciplinary Rule 2-103A and Disciplinary Rule 2-104A of the Code of Professional Responsibility, solicited the Personal Injury cases of Carol McClintock and Wanda Lou Holbert. Respondent's Answer to the Complaint denied a violation of DR 2-103A and DR2-104A and, coupled with a motion to dismiss, contended that these provisions of the Code of Professional Responsibility are unconstitutional for repugnancy to the free speech provisions of the First Amendment to the United States Constitution.

DISCUSSION

Respondent, age 54, was admitted to the practice of law in the State of Ohio in March of 1948. At all times material to the Complaint, Respondent resided in the township of Montville, Ohio, Geauga County, and maintained an office in Cleveland, Ohio.

Most of the material events involved in this case occurred on or about February 13, 1974. In the early morning of that day, while at the Montville, Ohio postoffice, Respondent learned from the Postmaster's brother that Carol McClintock and Wanda Lou Holbert, of Chardon, Ohio, had been involved in a serious automobile accident. Neither Carol McClintock nor Wanda Lou Holbert were relatives or former clients of Respondent. Both were, if anything, casual acquaintances. Upon learning of the accident, which had occurred on February 2, 1974, Respondent concluded it would be a good thing to contact Carol. He thereupon telephoned her parents, obtained their consent to visit Carol at the hospital, and then proceeded to the hospital where Carol was undergoing treatment of the injuries sustained in the accident.

Carol McClintock testified that until Respondent visited her in the hospital on February 13th, she did not know that he was a lawyer. She admitted to a casual acquaintanceship with him, which began with her visits to the Montville postoffice to pick up the family mail, and which was limited to a customary exchange of greetings on such occasions. She also knew that her father had purchased an automobile from Respondent a number of years ago. Disputing this testimony, Respondent insisted that Carol must have been aware that he was a practicing lawyer because, among other things, he had been a candidate for a political office, and had displayed political campaign posters in his yard situated a mere mile from Carol's home.

After reviewing with Carol the legal merits of her cause and the need for proper representation, Respondent obtained Carol's consent to handle her claim. Leaving the hospital, Respondent drove to the home of Carol's parents where he examined their automobile liability policy, discussed the law applicable to passenger guests and obtained the address and directions to the home of Wanda Lou Holbert, a friend and passenger in the automobile driven by Carol McClintock.

Wanda Lou was 18 years of age. Respondent, upon being admitted to her home, advised Wanda that he represented Carol McClintock, and that he had a "tip" for her. Namely, that she had a substantial legal claim for the injuries she had suffered while riding as a passenger in the automobile driven by her neighborhood friend Carol. He further informed her he was prepared to supply her with the legal services necessary to capitalize on her claim. Respondent's representations induced Wanda to orally agree to engage him as her attorney in the matter.

The following day, February 14, 1974, Respondent telephoned Wanda Lou for purposes of firming the client-attorney relationship begun the preceding day. The phone was answered by Wanda Lou's mother, who unceremoniously advised him that his services were not desired. Respondent retorted by pointing out that it was not she but Wanda Lou, a competent consenting adult, who was his client. He, therefore, would disregard the comments and views expressed by her andwould not tolerate her interference with the professional relationship he had established with her daughter.

Respondent, in support of his claim that a binding agreement to engage his services had been made with Wanda Lou, introduced into evidence a taped recording of the February 13, 1975 conversation with Wanda Lou. The recording was

made on Respondent's recorder, hidden at the time of recording under Respondent's coat, and made without the knowledge of Wanda Lou. Some of the recorded conversation indicates a consent by Wanda Lou to the utilization of Respondent's professional services, but the conversation also demonstrates that this consent was induced and solicited by Respondent.

Thereafter, both Carol and Wanda attempted to disengage Respondent's services. Wanda's attempt began immediately, and Carol's in April, 1974. Respondent insisted he had a valid binding agreement with both, which he was determined would be performed. Respondent sued Carol McClintock on her signed agreement for the value of services rendered, and ultimately accepted a settlement in the amount of $4,100.00 to dispose of his claim. He testified that, as to Wanda Lou Holbert, he will abandon his claim against her because of his belief that under the Disciplinary Rules an ethical question arises "when a contract has its origin in a controversy." (Tr. 256)

It may be noted that no accusations or charges were leveled against Respondent by Relator for his conduct in clinging to the contracts of employment obtained in the manner found above. In some respects, Respondent's refusal to accommodate the desires and instruction of his solicited clients may be as reprehensible as the conduct condemned by Relator. However, there is insufficient evidence on which to base a finding that these activities, too, were violative of the Respondent's professional responsibilities.

Nor is there any evidence showing that Respondent's solicitation of Carol and Wanda Lou is part of an established or habitual course of conduct. Indeed, the only evidence of soliciting in the record is the pursuit of Wanda and Carol's causes.

FINDING OF FACT

The evidence fully demonstrates that Respondent in seeking and obtaining agreements from Wanda Lou Holbert and Carol McClintock to represent them in their respective claims for damages arising from the accident of February 2, 1974, violated Disciplinary Rule 2-103A and 2-104A of the Code of Professional Responsibility. Respondent's defense that the solicitation of business by an attorney is protected by the First Amendment to the Federal Constitution is without merit. His Motion to Dismiss predicated on this ground was overruled.

RECOMMENDATION

The Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio recommends that, pursuant to Section 15 Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio, Respondent, Albert Ohralik, be given a public reprimand.

/s/Robert L. Moulton
Chairman, Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

/s/William D. Radcliff
Secretary, Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio